

The Honorable Fred Van Sickle

STEVE W. BERMAN, WSBA No. 12536
ERIN K. FLORY, WSBA No. 16631
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
(206) 623-7292

BRADLEY B. JONES, WSBA No. 17197
KENNETH G. KIEFFER, WSBA No. 10850
F. MIKE SHAFFER, WSBA No. 18669
GORDON THOMAS HONEYWELL
MALANCA PETERSON & DAHEIM LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402
(253) 620-6500

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-0025-FVS

THIS DOCUMENT RELATES TO:
ALL ACTIONS

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION *IN*
LIMINE TO EXCLUDE
ARGUMENT THAT PERSONS
OTHER THAN PWC WERE
FRAUDULENT

Hearing Date: March 3, 2010
Time: 9:00 a.m.

MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 1

001758-11 353013 V1

1 Plaintiffs hereby move *in limine* to preclude PricewaterhouseCoopers
2 (“PwC”) from arguing at trial that other entities or individuals, including but not
3 limited to, current or former defendants, were fraudulent with regard to any
4 misrepresentations on the 2000 financials.

5
6 Despite the fact that PwC has now litigated two cases to the verge of trial
7 over its 2000 audits of Metropolitan and Summit, Plaintiffs are not aware of any
8 evidence that PwC has uncovered which suggests that any other entity, person, or
9 party was fraudulent in representations made as to the 2000 financials. Absent
10 such evidence, PwC should not be allowed argue that somebody was fraudulent, or
11 to include jury instructions or verdict-form questions which indicate that the jury
12 could find another person or party was fraudulent with regard to the 2000
13 financials.

14
15 This not a minor issue. Defendants are, as a general matter, jointly and
16 severally liable under Section 11. However, that joint and several liability does not
17 exist where one party is found to have committed fraud, but the other has not. *See*,
18 15 U.S.C. § 77k(f)(1). Given this statutory scheme of liability, PwC should not be
19 allowed to argue that other parties were fraudulent, or that PwC was defrauded,
20 with regard to the 2000 financials or the 2000 audit unless PwC presents evidence
21 which it believes is probative of fraud. Plaintiffs are not aware of any such
22 evidence and do not believe that any such evidence exists. Thus, the Court should
23 preclude PwC from making such an argument or seeking to have the jury make
24 such a finding in any proposed instructions or verdict form.

25
26
MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 2

001758-11 353013 V1

1 Dated this 16th day of February, 2010.

2
3 HAGENS BERMAN SOBOL SHAPIRO LLP

4
5 By /s/ Tyler S. Weaver

6 Steve W. Berman, WSBA No. 12536

7 Erin K. Flory, WSBA No. 16631

8 Tyler S. Weaver, WSBA No. 29413

9 Jeniphr Breckenridge, WSBA No. 21410

10 1918 8th Avenue, Suite 3300

11 Seattle, WA 98101

12 Telephone: (206) 623-7292

13 Facsimile: (206) 623-0594

14 F. Mike Shaffer, WSBA No. 18669

15 Bradley B. Jones, WSBA No. 17197

16 Kenneth G. Kieffer, WSBA No. 10850

17 GORDON, THOMAS HONEYWELL,

18 MALANCA, PETERSON & DAHEIM LLP

19 1201 Pacific Avenue, Suite 2100

20 Tacoma, WA 98402

21 Telephone: (253) 620-6500

22 Facsimile: (253) 620-6565

23
24 *Co-Lead Counsel for Plaintiffs*

25
26 MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 3

001758-11 353013 V1

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party via email on February 16, 2010 to the following:

George S. Azadian Azadian@strook.com

James K Barbee at jim@golbeckroth.com

Philip S Beck at anne.doyle@bartlit-beck.com; susan.dandrea@bartlit-beck.com

Ronald L Berenstein at rberenstein@perkinscoie.com; jstarr@perkinscoie.com

Steve W Berman at steve@hbsslaw.com; heatherw@hbsslaw.com

Brian D Buckley at bbuckley@fenwick.com

Elizabeth J Cabraser at ecabraser@lchb.com; ewalser@lchb.com

Kelly P Corr at kcorr@correronin.com; dpatterson@correronin.com; reception@correronin.com

Pearl Del Rosario at pdelrosario@orrick.com; valdeman@orrick.com

Christopher G Emch at emchc@foster.com; pateb@foster.com

Timothy L Filer at filet@foster.com; howej@foster.com

Steven Fogg at sfogg@correronin.com; ivandiver@correronin.com

E Joseph Giometti at jgiometti@orrick.com; gjohnson@orrick.com

Peter Jennings Grabicki at pjg@randanco.com; scc@randanco.com; nlg@randanco.com

Gary I Grenley at ggrenley@grebb.com

Richard M Heimann at rheimann@lchb.com; lsimms@lchb.com

Kenneth P Herzinger at kherzinger@orrick.com

MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 4

1 David D Hoff at dhoff@tousley.com; btaylor@tousley.com
2 Tarek Ismail at tarek.ismail@bartlit-beck.com; anne.doyle@bartlit-beck.com
3 Stephen M Knaster at sknaster@orrick.com; vadelman@orrick.com
4 James B. King at jking@ecl-law.com
5 Christopher D Landgraff at chris.landgraff@barlit-beck.com
6 Mary D Manesis at mmanesis@stroock.com; cdusi@stroock.com
7 J Scott McBride at scott.mcbride@barlit-beck.com
8 James P McNeill, III at mcnej@foster.com
9 Michael L Merriman at michael.merriman@barlit-beck.com
10 Jeffrey S Miller at milje@foster.com; kellie@foster.com; snydd@foster.com;
11 hickc@foster.com
12 John Degnan Munding at munding@crumb-munding.com; brittany@crumb-munding.com
13 Robert J Nelson at rnelson@lchb.com
14 Kevin Daniel O'Rourke at korourke@southwellorourke.com
15 Carl J Oreskovich at carl@ettermcmahon.com; roni@ettermcmahon.com
16 Erin K. Flory at erin@hbsslaw.com; carrie@hbsslaw.com
17 Andrew K Polovin at andrew.polovin@bartlit-beck.com;
18 anne.doyle@bartlit-beck.com
19 Terry J Price at tprice@rmalw.com
20 Mark Roth at mark@golbeckroth.com
21 Stephen M Rummage at steverummage@dwt.com; jeannecadley@dwt.com
22 Darrell W Scott at scottgroup@mac.com; ssimatos@mac.com
23
24
25
26

MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 5

001758-11 353013 V1

1 M Todd Scott at tscott@orrick.com; jwatts@orrick.com; tmanolova@orrick.com

2 James M Shaker at shaker@ryanlaw.com; callahan@ryanlaw.com

3 Daniel F Shea at dfshea@hhlaw.com;

4 Kim D Stephens at kstephens@tousley.com; efile@tousley.com;
5 jalbertson@tousley.com

6 Julia B Strickland at jstrickland@stroock.com; tmitchell@stroock.com;
7 lacalendar@stroock.com

8 Earl M Sutherland at esutherland@rmlaw.com; lfisher@rmlaw.com

9 Beth E Terrell at bterrell@tousley.com; bkinsey@tousley.com; efile@tousley.com

10 Paul H Trincherro at ptrincherro@grebb.com

11 Michael C Tu at mtu@orrick.com; sspencer@orrick.com

12 Robert P Varian at rvarian@orrick.com

13 Fabrice Vincent at fvincent@lchb.com; dclevenger@lchb.com

14 Joshua Watts at jwatts@orrick.com; gjohnson@orrick.com

15 Christine Marie Weaver at cw@cweaverlaw.com

16 Leslie Richard Weatherhead at lwlibertas@aol.com

17 Charles S Wright at charleswright@dwt.com; terriray@dwt.com

18
19
20
21
22
23
24
25
26

MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 6

001758-11 353013 V1

HAGENS BERMAN SOBOL SHAPIRO LLP

By s/ Tyler S. Weaver

Tyler S. Weaver, WSBA No. 29413

1918 8th Avenue, Suite 3300

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

Co-Lead Counsel for Plaintiffs

MEM. RE: MTN *IN LIMINE* TO
EXCLUDE ARGUMENT THAT
PERSONS OTHER THAN PWC
WERE FRAUDULENT (Case No. CV-
04-0025-FVS) - 7

001758-11 353013 V1

